



95TH GENERAL ASSEMBLY

State of Illinois

2007 and 2008

HB3430

Introduced 2/27/2007, by Rep. Jack D. Franks

SYNOPSIS AS INTRODUCED:

735 ILCS 5/2-615.1 new

Amends the Code of Civil Procedure. Provides that a cause of action against a person arising from any act of that person in furtherance of the person's right of petition or free speech under the United States Constitution or Illinois Constitution in connection with a public issue is subject to a special motion to dismiss unless the court determines that the party bringing the action has established that there is a probability that the party will prevail on the claim. Provides for notice, attorney's fees and costs, and appeals. Does not apply to an action brought by the Attorney General, a State's Attorney, or an attorney for a unit of local government acting in an official capacity. Provides that discovery proceedings in the action shall be stayed until notice of entry of the order ruling on the motion unless the court orders that specified discovery be conducted. Provides that the Attorney General shall report to the General Assembly on the frequency and outcome of special motions to dismiss and shall maintain a public record of motions to dismiss and related pleadings and orders transmitted to it by parties to actions.

LRB095 09970 AJO 30183 b

1 AN ACT concerning civil procedure.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Civil Procedure is amended by adding
5 Section 2-615.1 as follows:

6 (735 ILCS 5/2-615.1 new)

7 Sec. 2-615.1. Right of petition or free speech; special
8 motion to dismiss.

9 (a) The General Assembly finds and declares that there has
10 been a disturbing increase in lawsuits brought primarily to
11 chill the valid exercise of the constitutional rights of
12 freedom of speech and petition for the redress of grievances.
13 The General Assembly finds and declares that it is in the
14 public interest to encourage continued participation in
15 matters of public significance, and that this participation
16 should not be chilled through abuse of the judicial process. To
17 this end, this Section shall be construed broadly.

18 (b) As used in this Section, "act in furtherance of a
19 person's right of petition or free speech under the United
20 States Constitution or Illinois Constitution in connection
21 with a public issue" includes:

22 (1) any written or oral statement or writing made
23 before a legislative, executive, or judicial proceeding,

1 or any other official proceeding authorized by law;

2 (2) any written or oral statement or writing made in
3 connection with an issue under consideration or review by a
4 legislative, executive, or judicial body, or any other
5 official proceeding authorized by law;

6 (3) any written or oral statement or writing made in a
7 place open to the public or a public forum in connection
8 with an issue of public interest; and

9 (4) any other conduct in furtherance of the exercise of
10 the constitutional right of petition or the constitutional
11 right of free speech in connection with a public issue or
12 an issue of public interest.

13 (c) A cause of action against a person arising from any act
14 of that person in furtherance of the person's right of petition
15 or free speech under the United States Constitution or Illinois
16 Constitution in connection with a public issue is subject to a
17 special motion to dismiss unless the court determines that the
18 party bringing the action has established that there is a
19 probability that the party will prevail on the claim. In making
20 its determination, the court shall consider the pleadings and
21 supporting and opposing affidavits stating the facts upon which
22 the liability or defense is based. If the court determines that
23 the party bringing the action has established a probability
24 that he or she will prevail on the claim, neither that
25 determination nor the fact of that determination shall be
26 admissible in evidence at any later stage of the case, and no

1 burden of proof or degree of proof otherwise applicable shall
2 be affected by that determination.

3 (d) In an action subject to subsection (c), a party filing
4 a special motion to dismiss is entitled to recover his or her
5 attorney's fees and costs if the motion prevails. If the court
6 finds that a special motion to dismiss is frivolous or is
7 solely intended to cause unnecessary delay, the party bringing
8 the action is entitled to recover his or her attorney's fees
9 and costs.

10 (e) A special motion to dismiss may be filed within 60 days
11 of the pleading that is subject to the special motion to
12 dismiss or, in the court's discretion, at any later time upon
13 terms it deems proper. The special motion to dismiss shall be
14 scheduled for hearing not more than 30 days after service of
15 the motion unless the docket conditions of the court require a
16 later hearing.

17 (f) Except as otherwise provided in this subsection (f),
18 all discovery proceedings in the action shall be stayed upon
19 the filing of a notice of motion made under this Section. The
20 stay of discovery shall remain in effect until notice of entry
21 of the order ruling on the motion. The court, on motion and
22 notice and for good cause shown, may order that specified
23 discovery be conducted notwithstanding this subsection (f).

24 (g) An order granting or denying a special motion to
25 dismiss is appealable in the same manner as a final order in
26 the action.

1 (h) This Section does not apply to an action brought by
2 the Attorney General, a State's Attorney, or an attorney for a
3 unit of local government acting in an official capacity.

4 (i) A party filing a special motion to dismiss under this
5 Section and a party filing a response to a special motion to
6 dismiss shall promptly transmit to the Attorney General, by
7 e-mail or fax, a copy of the motion or response, a copy of any
8 related notice of appeal, and a copy of any order issued under
9 this Section, including any order granting or denying a special
10 motion to dismiss, discovery, or fees. The Attorney General
11 shall maintain a public record of information transmitted under
12 this subsection (i) for at least 3 years and may store the
13 information on microfilm or other appropriate electronic
14 media.

15 (j) On or before December 31, 2010, the Attorney General
16 shall report to the General Assembly on the frequency and
17 outcome of special motions to dismiss made under this Section
18 and on any other matters pertinent to the purposes of this
19 Section.